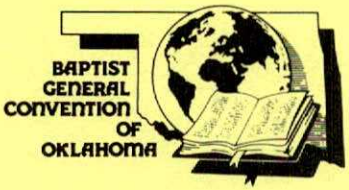
CHURCH AND LAW

Essential Information For Church Leaders

BAPTIST GENERAL CONVENTION
OF
OKLAHOMA

1994



Library of Tim Servati

Donated by his uncle,
Rev. Richard Servati

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Introduction

We live in a world of change. Some of these changes affect the church and the ordained minister.

The church must look carefully at many different areas. She is facing external opposition and government requirements as never before. Forms W-2, 1099, 941 and I-9, liability, clergy malpractice, screening of potential employees, risks and potential lawsuits make it mandatory that the church be informed. These important matters need the attention of both the church and pastor. The 1994 Minister's Tax Guide of the Annuity Board of the Southern Baptist Convention is very thorough. Read it carefully. The book is available to the church at no charge, call 1-800-262-0511.

The booklet you hold certainly is not exhaustive. Its purpose is to call these areas to the attention of the church leadership. This information needs serious study, consideration and possible action by the church. Periodic revisions will be made.

Our prayer as a committee of the Baptist General Convention of Oklahoma is that this booklet will be of assistance in providing information and resources.

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INCORPORATION

Incorporating has many advantages for a church. An incorporated church has an easier time securing a loan. Individual members cannot be named in a lawsuit directed primarily against the church. An incorporated church can hold title to property (a non-incorporated religious body cannot legally hold title). For information on incorporation contact: Secretary of State, Room 101, State Capitol Building, 2300 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

Every church should check its papers of incorporation. Under certain circumstances those papers must be renewed. Simply look at the papers of incorporation to see if there is any mention of time limitation. If in doubt have an attorney give an opinion.

CONSTITUTION AND BYLAWS

Every church needs a means by which it conducts its business and relates to its membership and the community at large. The constitution and bylaws are the means which declare the cooperatively held truths and the rules for dealing with the issues that face the church.

The constitution may include all or any of the following points:

1. A preamble which declares the purposes of the constitution.
2. The official name of the church which may be used for business and legal purposes.
3. A statement of the purposes and objectives of the church.
4. A declaration of the basic doctrinal beliefs of the church.
5. The church covenant.
6. A statement of polity and relationships.

The bylaws are the practical directories which a church uses to deal with internal matters and its dealings with others. Bylaws focus on procedures that may change more often than the constitution. The bylaws give direction to the following items: the manner of receiving members; procedures for terminating employees and disciplining members; committees and their responsibilities; church officers, their election and terms of service; and the organizational description of the church, its leadership and relationships.

Additional information regarding constitution and bylaws may be secured from the Planning and Promotion Office of the Baptist General Convention of Oklahoma, 3800 N. May, Oklahoma City, Oklahoma 73112-6506 or phone (405) 942-3800.

SUGGESTIONS FOR DEALING WITH THE IRS

The Internal Revenue Service laws and tax codes change from year to year. Suggestions made now may be changed in years to come. This information is designed to give your church some basic guidelines and by no means is an exhaustive or complete discussion of the topics included.

Important Internal Revenue Service Forms

W-2—Used by employers (the church) to report annual compensation and withhold income taxes and FICA taxes for each employee. Churches must issue this form to each employee before February 1. Ordained ministers pay self-employment social security instead of FICA.

1099—Used to report payment of nonemployee compensation of $600 or more during any one year to the same individual. Churches use this form to report compensation of $600 or more paid to self-employed clergy or other self-employed workers, including evangelists, Bible teachers, and guest speakers.

941—Used by employers (the church) to report to the IRS wages paid to employees and income taxes and FICA taxes withheld each quarter. Churches must file this form quarterly with the IRS if they have at least one employee. The amounts reported on a church's W-2 forms at year-end must reconcile with the 941 forms filed during the year.

W-4—Employees report withholding allowances on this form, to help their employer in deciding the amount of taxes to be withheld. Wages of a minister are exempt from withholding, but clergy can elect voluntary withholding by submitting a completed Form W-4 to their employing church. All nonminister employees should complete this form.

I-9—The church should have this form on file for each employee, including ministerial staff. It is a result of the Immigration Act of 1986 and is self-explanatory. Failure to have I-9s for every employee could result in fines for each occurrence. The I-9 is not a part of IRS regulations but is a legal matter by which every church should abide.

1. Every church should issue a Form W-2 to all employees including ministerial staff. The W-2 for ministerial staff should not include housing in box 1. In fact housing does not have to be shown on the W-2. Neither should any other tax-free benefits such as annuity or insurance be included in box 1.

2. The housing allowance is available to every ordained staff member. (It is also available for licensed staff members if the church views their duties as ministerial). The housing allowance is available even to those who live in church owned housing with or without utilities paid. All housing must be predetermined by the minister and submitted to the church or appropriate committee for approval. This approval does not imply that the minister must answer to the church or any committee as to the amount of housing or to the details of spending the housing allowance. He answers only to the IRS in case of audit. He should maintain accurate and complete records of housing expenses. The minister should overestimate housing so as to provide enough for unforeseen expenses. At the close of the tax year, he then reports unspent housing on his tax return as income and pays the appropriate taxes on that unspent portion. All housing is subject to self-employment taxes. See illustrations A and B.

3. The reporting of professional expenses (including car allowance and all costs incurred as part of the job) is a tremendous tax break for the staff member, but it needs to be handled carefully and in the most advantageous manner. If the staff member accounts to the IRS (this is referred to as a non-accountable plan), he stands to lose 50 percent of all meals and entertainment and 2 percent of his adjusted gross income for deductible purposes. Also, the staff member must be able to itemize on his tax return in order to do this; and many ministers who live in church owned homes cannot itemize. In a case of being unable to itemize, he loses all professional expenses for deduction purposes.

4. The most advantageous method of handling professional expenses is to account to the church. This is referred to as an accountable reimbursement plan. The church reimburses the staff person for professional expenses. The IRS does not like the term "pay package" in reference to the compensation and fringe benefits for staff members. Churches should avoid the term "package" altogether. In order for the IRS not to consider the Professional Expense Reimbursement Account to be salary reduction (another item IRS does not like), care must be made in constructing the

church budget in such a way that the Professional Expense Reimbursement Account does not appear in close proximity to Salary, Housing, Annuity and Insurance line items. The professional expense item should appear in another section of the budget and should not be totaled together with Salary, Housing, Annuity and Insurance amounts in any way to reflect that professional expenses are part of salary. If the IRS suspects that professional expenses are in any way salary reduction, all of those professional expenses will be treated as non-accountable reimbursement, thus becoming taxable income. Hence the problems of paragraph three above come into play. Beginning January 1, 1994, the standard mileage rate for business miles is 29 cents. See illustration C.

5. Ordained ministers are employees for tax reporting purposes and self-employed for social security purposes. A staff person who is not ordained may be considered by the church to perform the essential functions of a minister and be granted a housing allowance. If he takes a housing allowance, he is then classified as self-employed for social security purposes. There may be advantages for a non-ordained staff member to opt for non-ministerial status to avoid the self-employment tax.

6. Churches are required to withhold taxes from all employees except ordained staff. An ordained staff member, however, may ask the church to withhold sufficiently each pay period to cover both income tax and self-employment tax. This withholding is actually extra income tax to make up for the self-employment tax.

7. **Church or Church Staff Involvement in Politics. The IRS has announced that it intends to focus more directly on the political activities of exempt organizations, including churches. The announcement clearly cites five activities of exempt organizations that the IRS deems inappropriate: (1) the endorsement of candidates, (2) making donations to a candidate's campaign, (3) engaging in fund raising on behalf of a candidate, (4) distributing statements supporting or opposing a political candidate, and (5) becoming involved in any other activities that may be beneficial or detrimental to any candidate. A staff member, of course, may support any candidate or issue he chooses. However he should be very careful not to do so from the pulpit, on church letterhead stationery, or in official church publications and/or communications. Violation of this ruling could result in loss of tax exempt sta-**

tus for the church; thus, contributions to the church would not be tax deductible for members. A church or staff member may, of course, choose to support publicly ethical and moral issues if that support does not endorse or denounce an individual.

Refer to the Ministers Tax Guide from the Annuity Board of the Southern Baptist Convention for additional information regarding IRS approved minister's taxes (housing allowance, accountable reimbursement plan, etc.). Call the Annuity Board, 1-800-262-0511, for a complimentary copy of this guide.

REDUCING THE RISK TO YOUR CHURCH

One important aspect of good church stewardship is to reduce risks by keeping facilities free of hazards that could cause accidents. Frequent causes of injury in churches are slips and falls. One survey revealed that 39 percent of all injuries resulted from this type of accident and payments for slips and falls amounted to 36 percent of all dollars paid on general liability claims.

Here are some suggestions for your church:

1. Take a tour of your church buildings and grounds.
   * Are the floors too slick?
   * Are there tears in the carpets and/or rugs?
   * Are stairs free of loose threads and other obstacles?
   * Are walks and steps kept free from water spills and/or ice and snow?
   * Is the parking area free of hazards?
2. What about your church buses and vans?
   * Are they kept in top mechanical condition?
   * Are the brakes properly maintained?
   * Do they have good tires?
3. Are your pastor and staff members protected in case of lawsuits?
4. A word of caution about the use of the word *counselor* or *counseling* in regard to your professional ministry staff.

Unless they are trained, certified counselors, the term *counseling* or *counselor* should not be used. Find another word. Use the word *minister* or *helper*. The courts often see the term *counselor*, or *counseling*, referring to one who is certified, and therefore may be held liable for what he/she suggests in *counseling*. **Reduce the risk of a lawsuit by referring to your staff as ministers; therefore, *ministering* rather than *counseling* would be acceptable terminology**.

5. Screen teachers and volunteers, especially those who work with children or youth. **Sex offenders often prey on churches and often seek to work with children and youth**. Always have more than one adult worker at the same time with children or youth. **Never simply ask publicly for volunteers to serve as workers. Sex offenders may use that opportunity to be near children or youth**. Enlist only those you know to serve in this capacity.
6. In cases of accidents or situations involving sexual misconduct, the church must act quickly and decisively. Delay invites ill will at best and litigation at worst.

These are a few suggestions that, if followed, can reduce the church's risk enormously.

PROTECTION FROM RISK TO YOUR CHURCH

Your church represents a major financial and personal commitment by your members. It is important that you select the proper insurance carrier and the proper insurance coverage that will give your church the protection needed. Listed are some of the options available to you. Also, periodically evaluate your coverage to make sure it is adequate.

1. **Property Coverage.** This type of insurance provides protection of buildings against fire, lightning, explosion, windstorm, hail, etc. Be sure that the property is insured for enough to replace it if destroyed. Arson is becoming a huge problem for churches because of people who burn for spite or vindictiveness.

2. **Liability Coverage.** Liability coverage varies because there are several options such as general liability; hired and non-owned auto liability; directors, officers and trustees liability; medical, etc. It is important to the church membership to have adequate protection in these areas.

3. **Other Protection Available.**

   Workers' Compensation—The Oklahoma state law requires that every paid employee be covered by Workers' Compensation. **CHURCHES ARE NOT EXEMPT FROM THIS LAW AND ARE LIABLE IF AN EMPLOYEE IS HURT WHILE ON THE JOB.**

   Minister's Business Property—Provides coverage for business property owned by the minister that is normally used in the ministerial profession.

   Employee Dishonesty—Provides coverage for dishonest acts of persons defined in the policy.

INDIVIDUAL CASH CONTRIBUTIONS OF $250 OR MORE

New substantiation rules taking effect on January 1, 1994, deny a deduction for individual contributions of $250 or more made after December 31, 1993, unless the donor "substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization." *Donors no longer will be permitted to substantiate individual cash contributions of $250 or more with canceled checks.* They must receive a written acknowledgment from the church or other charity. The law specifies that a written acknowledgment must include the following information:

1. The amount of cash and a description (but not value) of any property other than cash contributed.
2. Whether the church or other charity provided any goods or services referred to in No. 1.

3. A description and good faith estimate of the value of any goods or services referred to in No. 2 or, if such goods or services consist solely of intangible religious benefits, a statement to that effect. In this case the term "intangible religious benefit" means any intangible religious benefit provided by an organization exclusively for religious purposes, which generally is not sold in a commercial transaction outside the donative context.

It is not necessary to list a donor's social security number on the written acknowledgment. Further, a church's written acknowledgment must only be issued to the donors. It is not sent to the IRS. If, however, the church files a return which lists the contribution and includes the information set forth above, the donor is not required to substantiate in accordance with this rule.

The written acknowledgment must be "contemporaneous," meaning that it must be *received by donor* on or before the *earlier* of the following two dates: (1) the date the donor files a tax return claiming a deduction for the contribution or (2) the due date (including extension) for filing the return. Since a church will not know when donors will be filing their tax returns, it will be necessary to issue written acknowledgments no later than early January for contributions made during the preceding year. Alternatively, church treasurers can issue written acknowledgments upon receipt of any contribution of $250 or more.

Recommendation. To avoid jeopardizing the tax deductibility of charitable contributions, churches should advise donors at the end of the year not to file their current year income tax returns until they have received a written acknowledgment of their contributions to the church. This communication should be in writing. To illustrate, the following statement could be placed in the church bulletin or newsletter for the last few weeks of the current year:

> **Important Notice:** To ensure the deductibility of your church contributions, please do not file your income tax return until you have received from the church a written acknowledgment of your contributions. Under new rules that took effect this year, you may lose a deduction for some contributions if you file your tax return before receiving written acknowledgment of your contributions.

SEXUAL MISCONDUCT INSURANCE

Regretfully, sexual misconduct can happen any place, including churches. It can involve not only lay church employees but also members of the clergy. Although not a frequent occurrence, nationwide media coverage of such incidents reflects the concern of our society about sexual misconduct.

Sexual Misconduct Insurance Protection can provide protection from legal liability deriving from incidents of sexual misconduct. This protection includes defense costs. This type of coverage protects the church members, directors, officers, employees and volunteers from situations where the church may be held legally responsible and liable for the acts or conduct of an individual. This is true even if the church is not specifically aware of, does not participate in, and does not direct or condone such conduct or actions. In instances of sexual misconduct, those claims which occur most frequently against the church or individuals are based upon poor hiring and supervision practices, although the allegations and claims can take many forms.

Your attorney is the best source of information regarding the laws concerning the church and sexual misconduct. Seek an attorney familiar with these laws.

The church must exercise good screening practices in employing persons or seeking volunteers who work with individuals in the youth, children and preschool areas. Screening procedures to consider may be suggested by an attorney. Other help in this area may be found in the book, Reducing the Risk of Child Sexual Abuse in Your Church, by Richard R. Hammer, Steve W. Kilpowicz and James F. Cobble, Jr. Employee policies should be in written form and shared with and agreed to by all employees and volunteers.

CLERGY SEXUAL MISCONDUCT

Cases have been tried where denominations have been protected from liability for the sexual misconduct of clergy. Because this conduct is outside the scope of employment and because it is not foreseeable, denominations should not be held liable for such conduct.

Search committees and personnel committees should carefully consider their practices regarding the calling of future staff persons. This study can enable them to determine whether they are at risk in "hiring practices." Negligent hiring occurs when employers fail to exercise reasonable care in hiring employees. The term "reasonable care" in hiring practices most definitely includes thorough interviews and reference checks. Any search committee, whether involved in seeking a staff person or pastor, should always do a very detailed interview and a complete reference check.

If a church knows that a pastor or staff person has previously engaged in sexual misconduct, the church should seriously consider its potential liability for calling that person should the minister again engage in sexual misconduct. If, after a thorough investigation, the church is convinced that the minister has received adequate counseling and is unlikely to repeat the conduct, the church should still avoid putting the minister in situations such as "counseling" someone of the opposite sex without anyone else around. Some churches would undoubtedly opt not to call that person.

In the event that the denomination (state convention or association) or a previous church knows of sexual misconduct and has withheld such information, it may be held liable in the event of a repeat of such misconduct. Churches should be aware of the potential for negligent hiring claims when they fail to exercise reasonable care in calling a pastor or staff person.

CLERGY MALPRACTICE

Pastors and staff persons devote their lives to helping others, and yet clergy malpractice lawsuits have the effect of punishing pastors for things that are beyond their control. Until recently, courts did not interfere in relationships between church members and the clergy.

At some point in time most, if not all, pastors generally perform some type of pastoral counseling. "Counseling" is most likely to be the subject of a clergy malpractice lawsuit. The idea of clergy malpractice seems incredible to most ministers. However, people seem to be "lawsuit happy."

The term *counseling* or *counselor* should not be used in churches, camps, assemblies, etc., unless the one doing the counseling is certified. Terms such as *helping, equipping, assisting, sharing,* etc., may be used to reduce the risks of lawsuits. The average minister should not avoid helping the hurting person. Ministering is a necessity. The use of the word ***"counseling"*** should be avoided.

There should be no hesitation on the part of the pastor to refer a counselee to a trained counselor such as a psychologist, psychiatrist, hospital chaplain, etc. Pastors can help members deal with reservations about seeking counseling outside the church by encouraging them to seek a certified counselor or therapist.

Upon going to a new church field pastors need to seek available resources for counseling referrals.

THE DAY CARE CENTER

Today's headlines frequently highlight child molesting in day care centers. Church sponsored day care centers and schools are not immune from the problem.

Sponsoring such facilities exposes the church and the pastor to many dangers. Following are suggestions to prepare wisely for the operations of a day care center. This list is not exhaustive but should make one aware of what needs to be done.

1. Have a church elected day care center committee. The Sunday School Board of the Southern Baptist Convention can provide information on the responsibilities of such a committee.
2. Obtain insurance for such facilities. A committee should have a good working relationship with a reputable attorney. Let him help you select a good insurance company.
3. Check all the legal implications of having a day care center, school or both. Any person suspected of child molestation or abuse must be reported.
4. Make sure your principal or day care director is familiar with laws and procedures in handling suspected molestations. (Suggested source of information: Reducing the Risk of Child Sexual Abuse in Your Church, by Richard R.

Hammer, Steve W. Kilpowicz, and James F. Cobble, Jr. This book may be secured from Christian Ministry Resources, P.O. Box 1098, Matthews, NC 28106, or phone (704) 841-8066.)

5. Maintain good communications among your staff. People who get along well together naturally look out for one another.
6. Inform parents, children, and staff on how to handle improper advances. A voluntary information program may suffice, but it should be repeated every year. Several are conducted in the state each year. The area Christian Schools Organization or the local Board of Education can suggest programs available in your area.
7. Build a solid base of support within the congregation for the day care center or school. Christian schools and day care centers provide a wonderful ministry. The possibility of problems should not hinder a church from having a day care center. Do it correctly!

IMPROPER OR INADEQUATE SUPERVISION

It is impossible to oversupervise. Most state or local governments have specific requirements on the minimum ratio of supervisors to participants. **Probably more litigation results from "failure to properly supervise" than any other cause. If negligence cannot be found for any other reason, attempts are made to find inadequate supervision.**

Instances where improper or inadequate supervison will likely be alleged are:

1. The playground
2. Sunday School
3. Church outings
4. Church sponsored sporting events
5. Church sponsored field trips
6. Church sponsored swimming parties
7. Church sponsored fellowships

8. Camps, such as Falls Creek and associational camps

Proper location of supervisors on the playground or at the swimming pool is as important as the number of supervisors. Governmental authorities should be contacted prior to events on public property to determine any safety requirements and to notify authorities of the type of activity planned. Parents should be informed in writing of the exact nature of the planned event and the supervision to be given by the church. Written parental consent should be obtained for any special event.

Qualifications required for supervisory personnel should be determined for each event. The church needs to provide people of mature judgment who have experience supervising groups of children or young people. The supervisors should not have a history of problems with assigned groups. Do a thorough check. Do not just enlist any person or persons available. Select only responsible, mature adults.

Be certain that a thorough check has been made on any individual serving as a supervisor, especially those who are employees of the church or the church sponsored school. All states have standards for hiring employees in charge of children.

For requirements for hiring persons who work with or are in charge of a group of children see the document, "Requirements for Child Care Centers," prepared by the Oklahoma State Department of Human Services (see Resources).

Susceptibility of Churches

1. Trust—Churches tend to be trusting and unsuspecting institutions. Even when questions are raised about a worker's conduct, church leaders may ignore the evidence rather than question the worker's character or motives.
2. Lack of Screening—Some churches do nothing to "screen" youth or children's workers. Complete strangers may be accepted to work with children without any investigation.
3. Opportunity—Churches provide ample opportunity for unsupervised, close, personal contact between adults and children. This risk increases dramatically for overnight activities.

4. Access—Molesters are often attracted to an institution in which they have immediate access to potential victims in an atmosphere of complete trust, such as the church.
5. Need—Most churches struggle to get adequate help for children's and youth ministries. Securing workers can become an unending effort. However, the personnel committee or age division director **must** adhere to the policies of the church regarding employees or volunteers.

CHURCH LIABILITY FOR ACTS OF CHILD MOLESTATION

Lawsuits against churches are becoming more common than one likes to think. Lawsuits involving acts of child molestation are frequently in the news.

Good interviewing and hiring practices should be exercised by every church when enlisting volunteers or employing staff. Following are illustrations of churches who have experienced lawsuits.

Illustration: Church "A" was sued because it used children's workers who were themselves victims of child abuse. Notice what this church omitted.

1. The church had not performed a background check.
2. It had failed to ask workers if they had themselves been victims of abuse as children.

Extra care needs to be given in questioning potential staff and volunteers to work with children and/or youth. Areas of discussion should include: marital status, Christian experience and church membership, places of previous employment or service, and references. The court has not determined what constitutes an adequate background check. Questions concerning abuse as a child, criminal record, and discrimination should be asked with discretion. Information concerning screening can be found in the *1993 Oklahoma Baptist Regional Tax Seminars Advanced Workbook*, pages 47-49.

Illustration: Church "B" kept assigning a minister to work with

youth in spite of indications there were problems of molestations. The church was found liable.

Plaintiffs were granted $200,000 in punitive damages and $900,00 compensatory damages.

A good "rule of thumb" is never allow anyone who has been a church member less than a year to work with children or youth. Certainly, exceptions to this policy may be considered with wisdom, discretion and previous knowledge of the candidate.

BUS/VAN MINISTRY

The church bus ministry program can be a rewarding ministry for the church and an extension of the church into the community. It can also present some serious problems if not properly supervised and controlled. These suggestions are given to maintain a safe and successful bus ministry program. They are not designed to influence a decision whether or not to have a bus ministry.

Driver Selection

Driver selection is the "NUMBER ONE" task in the development of a successful bus program. Up to 90 percent of all bus accidents result, at least in part, from driver error. A few major considerations for drivers are:

AGE—25 to 65 only.

GOOD PHYSICAL CONDITION—Physician report.

EXPERIENCE—Reference check and road test.

LICENSE—Commercial vehicle license.

DRIVING RECORD—Motor vehicle record checked annually.

ATTITUDE—Capable of dealing with traffic, passengers and emergencies.

NO ONE SHOULD BE PERMITTED TO DRIVE A CHURCH VEHICLE IF THE PERSON HAS TWO MOVING VIOLATIONS OR ONE "AT FAULT" ACCIDENT IN THE PAST 36 MONTHS. THERE SHOULD BE NO EXCEPTIONS.

1. Driver Selection: Drivers should be mature, responsible and in excellent physical and mental condition. A flawless personal driving record is a must—no tickets, no violations and should demonstrate extreme dedication to safe driving.
2. License Examination: All potential drivers need to be screened by the bus committee to make certain that proper driving tests have been passed and current driving credentials are in hand.
3. Vehicle Maintenance: Make sure the bus complies with the Oklahoma requirements for lights, equipment, and color. Each bus must be given a thorough mechanical and physical inspection by a qualified mechanic prior to operation. The check list needs to include, but is not restricted to, checking chassis, all lights, body exhaust systems, interior, brakes, tires and steering.
4. Pre-trip Inspection: Each time a vehicle is used, the following should be checked: Under the hood, tires, exhaust, lights, brakes, and the interior of the bus.
5. Safety Equipment: Fire extinguisher, first aid kit, flags, flares and fuses on triangular signs must be carried on the vehicle at all times.
6. Speed Limit: Be sure the driver is aware of the laws of Oklahoma governing the speeds on streets and highways where the bus will be operated.
7. Supervision of Passengers: Control of occupants must include taking actions to protect passengers who exit from the bus at street crossings. **Do not** exceed bus or van passenger limits.
8. Church Policy: Each time a vehicle is used, its use must be in compliance with policies and regulations set forth and adopted by the church.
9. Insurance: Adequate insurance that complies with the law must be maintained at all times.
10. Adequate Supervision: Supervision of children aboard the bus should comply with the regulation ratios set by the Department of Human Services of the State of Oklahoma.

The recommended **minimum** ratios are:

Age of Child	Number of Children	Supervisors Recommended
1	6	1
2	8	1
3	12	1
4-5	15	1
6-12	20	1

GROUNDS AND BUILDING LIABILITY

State and local governments have specific statutes on building requirements. Churches and church sponsored schools should meet or exceed all requirements. These requirements include but are not limited to:

1. Doorways—Adequate width, safety glass, proper signs, fire exits, warning of step up or step down, unlocked fire exits.
2. Stairwells—Adequate width, hand railing on stairs, non-slick surface, adequate lighting, steps uniform heights, proper access for handicapped.
3. Floors—Non-slick surface, deviations in floor levels clearly marked, adequately lighted, marked changes in surface of tile to carpet and carpet to tile.
4. Balconies—Adequate hand rails, good lighting on balconies and in hallways.
5. Outdoors—Appropriate eaves and downspouts, renovation of areas where water or ice would accumulate, unbroken concrete sidewalks and driveways, railings on outside stairs, safe playground equipment, adequate parking lot lighting, elimination of parking blocks in parking areas.

This is not an exhaustive list. Local church leaders should be aware of specific statutes on building requirements in your given community, city or area. Check with proper city or community officials.

HAZARDOUS ACTIVITIES

We enjoy activities that foster good fellowship. However, in some activities the dangers outweigh the enjoyment. These are classified as hazardous and extra hazardous. Hazardous activities should be stringently supervised with strict limitations. Extra hazardous activities should **not** be sponsored by the church or the church sponsored school. Preferred Risk Insurance Company and the Annuity Board of the Southern Baptist Convention Property and Casualty Division are the sources for this information.

Hazardous	Extra Hazardous
Water slides	Hayrides
Water skiing	Mud olympics
Snow skiing	Dune buggies
Water rafting	Snow tubing
Unsupervised swimming	Obstacle courses
Canoeing	Haunted houses
Paddleboating	Tackle football
Horseback riding	Snowmobiles
Rope jumping contests	Rodeos
Basketball	Rope swings
Volleyball	Monkey bar playground equipment
Softball	Firework displays and stands
Sack races	Motorbikes
Touch football	Rock climbing
Roller skating	Trampolines
Ice skating	

MANAGING THE RISKS OF ARSON

Churches are vulnerable to arson because churches have predictable schedules and are unoccupied at times that are easy to anticipate. Churches generally have inconsistent security. Securing the building and key control are made difficult with multiple staff and volunteers in leadership positions. Often,

churches are targeted by certain persons who see them as representing authority or supporting a particular cause.

PREVENTION: Your Best Protection

External measures discourage or eliminate unauthorized entry from the outside. Have adequate lighting on all sides of the building and parking areas; proper hinges on the doors; protected crawl spaces; restricted access to roofs; fire escapes or outside stairways; properly trimmed shrubbery; adequate covering of windows and glass entries with wire mesh, bars, etc; and fencing to control access to the property.

Internal measures discourage unauthorized entry and foster early fire detection. Check hall lights. Make sure windows and doors are equipped with proper locks and/or dead-bolts. Designate persons to secure the building upon leaving. Control keys to the building; and have a central station alarm system, as well as smoke detectors. The fire marshall should make routine safety checks of fire exits, fire extinguishers, smoke alarms, etc. This can be done properly at very little cost.

In some neighborhoods and communities it is very important that the police routinely check the premises. The church may consider being a part of the neighborhood watch program.

AMERICANS WITH DISABILITIES ACT

The Americans With Disabilities Act protects qualified individuals with disabilities from employment discrimination. A person has a disability if he/she has a physical or mental impairment that substantially limits a major life activity. (Major life activity is defined as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, learning, breathing and working.)

An employer simply cannot discriminate merely on the basis of disability. An employer still has the right to employ the best qualified person. **However, if a disabled person is not hired and**

brings a lawsuit, the defendant must prove the non-disabled person who was hired was better qualified and the decision was not based on disability.

Most churches are not affected now by this act unless the church has fifteen or more employees. The church with fifteen or more employees may be impacted; the law is not clear at this point.

This law's unclear terms make it a fertile playground for lawyers.

Churches are not yet bound to abide by the public accommodation portion of the Americans With Disabilities Act.

LIABILITY WITHOUT PHYSICAL ABUSE

More and more lawsuits are being filed which relate to situations where physical injury is not involved. Such lawsuits include:

1. Slander and libel—statements made which are not true about members of the congregation or other individuals. Emotional distress is the issue.
2. Unchurching members—from the congregation.
3. Invasion of privacy—investigations into the private lives of church members such as searching personal items of students.
4. Public demonstrations—improperly conducted against individuals, groups, or organizations.
5. Publications—in which inaccurate information or accusations are published.
6. **Untrained counselors—offering counseling.**

EMPLOYMENT

Most employers are covered by the 1964 Civil Rights Act, which prohibits discrimination on basis of race, sex, religion, color, and national origin. Also there are other laws dealing with discrimination against handicapped persons or veterans. These laws will relate, but are not limited, to the following:

1. Recruitment
2. Testing and employment requirements
3. Checking references
4. Promotion policies
5. Sexual harassment
6. Termination
7. Giving references
   (1) Defamation—damage to a person's name or reputation.
      (a) Libel—refers to the written word.
      (b) Slander—refers to the spoken word.
   (2) Integrity—Churches should use the utmost integrity in giving references. Neutral reference policies are increasingly popular for employers who want to avoid defamation lawsuits. On the other hand, they present an obstacle for employers checking references of job applicants. Your church needs some guidelines about giving references, and it also needs a strategy for checking them.

Illustration A

Ministers' Estimate of Housing Expenses

To_____(Church)

From_____(Minister)

Subject: Housing Allowance for 19____

The amounts below are an estimate of the payments I expect to make during 19____ to provide a home.

ITEM	AMOUNT
1. Payments on purchase of house (including down payment, mortgage principal payments, interest, taxes) or rent on leased properties.	_____
2. Garage rental (if not included above)	_____
3. Utilities (gas, electricity, water, etc.)	_____
4. Insurance	_____
5. Repairs and maintenance	_____
6. Purchase of furnishings	_____
7. Other housing expenses	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date_____ Minister's Signature_____

Illustration B

Notification of Housing Allowance From the Church to the Minister

Date_____

Dear_____:

This is to advise you at the business meeting of

_____**Baptist Church**

held on_____,**19**___, **your housing allowance for the year 19**___ **was officially designated and fixed in the amount of**_____. **Accordingly** $_____ **of the total payments to you during the year 19**___ **will constitute housing allowance. (If a parsonage is provided, add: You will also have rent-free use of the home located**_____**for the year 19**___.

This action is recorded in the church minutes.

Under Section 107 of the Internal Revenue code an ordained minister of the gospel is allowed to exclude from gross income the housing allowance paid to him as part of his compensation to the extent used by him to provide a home. (He may also exclude the rent free use of a home.)

You should keep an accurate record of your expenditures to provide a home in order to be able to substantiate any amounts excluded from gross income in filing your federal income tax return.

Sincerely,

Clerk's signature_____

Illustration C

Sample Reimbursement Policy

In accordance with income tax regulations 1.62-17 and 1.274-5(3) the _____ Baptist Church hereby establishes a reimbursement policy for all ministers and staff members with the following terms and conditions;

1. The church will reimburse only ministry-related expenses incurred by a minister or staff member. Subject to budget limitations, such expenses will include:

a. Business use of automobile, up to the current IRS standard mileage rate;

b. Business travel away from home, transportation, lodging and meals;

c. Convention and conference registration expenses;

d. Education expenses, if otherwise qualified as an itemized deduction;

e. Subscriptions, books, and tapes, if related to ministry or employment;

f. Entertainment/hospitality expenses if business connection requirement is met.

2. The minister or staff member will account for each allowable expense in writing monthly. Documentation will include the amount, time and place, business purpose and relationship of each expense. A receipt will accompany the documentation.

3. The minister or staff member will return advances or reimbursements that exceed actual business expenses.

4. Under this accountable arrangement, the church will not report amounts reimbursed as taxable income on the minister or staff member's Form W-2. Neither will the minister or staff member report the reimbursed amounts as income on Form 1040 for personal tax purposes.

RESOURCES

Books

Hammer, Richard, *Pastor, Church and Law*, Christian Ministry Resources, P.O. Box 1098, Matthews, NC, (704) 841-8066.

_____, Steve W. Kilpowicz and James F. Cobble, Jr.,*Reducing the Risk of Child Sexual Abuse in Your Church*, Christian Ministry Resources, P.O. Box 1098, Matthews, NC, (704) 841-8066.

Periodicals

Advanced Workbook, Regional Tax Seminars, Baptist General Convention of Oklahoma, 1993.

Church Administration, The Sunday School Board of the SBC, 127 Ninth Ave., North, Nashville, TN 37234.

Ministers Tax Guide, Annuity Board, SBC, 2401 Cedar Springs Rd., P.O. Box 2190, Dallas, TX 75221-2190, 800-262-0511.

Requirements For Day Care Centers, Oklahoma Commission for Human Services, DHS Employees Library, (405) 521-3727.

The Clergy Journal, 100 N. Pine St., Seymour, IN 47274-2412.

The Church and The Legal Explosion, Preferred Risk Mutual Insurance Company, 1111 Ashworth Rd., West Des Moines, IA 50265.

A COOPERATIVE PROGRAM MINISTRY OF

BAPTIST GENERAL CONVENTION
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